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1 with the investigation or prosecution of a criminal offense, to
2 search for or seize any work product materials possessed by a
3 person in connection with a purpose to disseminate to the
4 public a newspaper, book, broadcast, or other similar form of
5 public communication, in or affecting interstate or foreign
6 commerce; but this provision shall not impair or affect the
7 ability of any government officer or employee, pursuant to
8 otherwise applicable law, to search for or seize such materi-
9 als, if—

10 (1) there is probable cause to believe that the
11 person possessing the materials has committed or is
12 committing the criminal offense for which the materials
13 are sought: *Provided, however,* That a government offi-
14 cer or employee may not search for or seize materials
15 described in subsection 2(a) under the provisions of this
16 paragraph if the offense for which the materials are
17 sought consists of the receipt, possession, communica-
18 tion, or withholding of such materials or the informa-
19 tion contained therein (but such a search or seizure
20 may be conducted under the provisions of this para-
21 graph if the offense consists of the receipt, possession,
22 or communication of information relating to the nation-
23 al defense, classified information, or restricted data
24 under 18 U.S.C. 793, 18 U.S.C. 794, 18 U.S.C. 797,

1 18 U.S.C. 798, 42 U.S.C. 2274, 42 U.S.C. 2275, 42
2 U.S.C. 2277, or 50 U.S.C. 783); or

3 (2) there is reason to believe that the immediate
4 seizure of the materials is necessary to prevent the
5 death of or serious bodily injury to a human being.

6 (b) Notwithstanding any other law, it shall be unlawful
7 for a government officer or employee, in connection with the
8 investigation or prosecution of a criminal offense, to search
9 for or seize documentary materials, other than work product,
10 possessed by a person in connection with a purpose to dis-
11 seminate to the public a newspaper, book, broadcast, or other
12 similar form of public communication, in or affecting inter-
13 state or foreign commerce; but this provision shall not impair
14 or affect the ability of any government officer or employee,
15 pursuant to otherwise applicable law, to search for or seize
16 such materials, if—

17 (1) there is probable cause to believe that the
18 person possessing the materials has committed or is
19 committing the criminal offense for which the materials
20 are sought: *Provided, however,* That a government offi-
21 cer or employee may not search for or seize materials
22 described in subsection 2(b) under the provisions of this
23 paragraph if the offense for which the materials are
24 sought consists of the receipt, possession, communica-
25 tion, or withholding of such materials or the informa-

1 tion contained therein (but such a search or seizure
2 may be conducted under the provisions of this para-
3 graph if the offense consists of the receipt, possession,
4 or communication of information relating to the nation-
5 al defense, classified information, or restricted data
6 under 18 U.S.C. 793, 18 U.S.C. 794, 18 U.S.C. 797,
7 18 U.S.C. 798, 42 U.S.C. 2274, 42 U.S.C. 2275, 42
8 U.S.C. 2277, or 50 U.S.C. 783); or

9 (2) there is reason to believe that the immediate
10 seizure of the materials is necessary to prevent the
11 death of or serious bodily injury to a human being; or

12 (3) there is reason to believe that the giving of
13 notice pursuant to a subpoena duces tecum would result
14 in the destruction, alteration, or concealment of the
15 materials; or

16 (4) the materials have not been produced in re-
17 sponse to a court order directing compliance with a
18 subpoena duces tecum, and

19 (A) all appellate remedies have been
20 exhausted; or

21 (B) there is reason to believe that the delay
22 in an investigation or trial occasioned by further
23 proceedings relating to the subpoena would threat-
24 en the interests of justice.

1 In the event a search warrant is sought pursuant to
2 this subparagraph, the person possessing the materials
3 shall be afforded adequate opportunity to submit an af-
4 fidavit setting forth the basis for any contention that
5 the materials sought are not subject to seizure.

6 INAPPLICABILITY OF THIS ACT TO SEARCHES AND SEI-
7 ZURES CONDUCTED TO ENFORCE THE CUSTOMS LAWS
8 OF THE UNITED STATES

9 SEC. 3. This Act shall not impair or affect the ability of
10 a government officer or employee, pursuant to otherwise ap-
11 plicable law, to conduct searches and seizures at the borders
12 of or at international points of entry into the United States in
13 order to enforce the customs laws of the United States.

14 REMEDIES

15 SEC. 4. (a) A person aggrieved by a search for or sei-
16 zure of materials in violation of this Act shall have a civil
17 cause of action for damages for such search or seizure—

18 (1) against the United States, against a State
19 which has waived its sovereign immunity under the
20 Constitution to a claim for damages resulting from a
21 violation of this Act, or against any other governmen-
22 tal unit, all of which shall be liable for violations of
23 this Act by their officers or employees while acting
24 within the scope or under color of their office or em-
25 ployment;

1 (2) against an officer or employee of a State who
2 has violated this Act while acting within the scope or
3 under color of his office or employment, if such State
4 has not waived its sovereign immunity as provided in
5 paragraph (1). It shall be a complete defense to a civil
6 action brought under this paragraph that the officer or
7 employee had a reasonable good faith belief in the law-
8 fulness of his conduct.

9 (b) The United States, a State, or any other governmen-
10 tal unit, liable for violations of this Act under paragraph
11 4(a)(1), may not assert as a defense to a claim arising under
12 this Act the immunity of the officer or employee whose viola-
13 tion is complained of or his reasonable good faith belief in the
14 lawfulness of his conduct, except that such a defense may be
15 asserted if the violation complained of is that of a judicial
16 officer.

17 (c) The remedy provided by paragraph 4(a)(1) against
18 the United States, a State, or any other governmental unit is
19 exclusive of any other civil action or proceeding for conduct
20 constituting a violation of this Act, against the officer or em-
21 ployee whose violation gave rise to the claim, or against the
22 estate of such officer or employee.

23 (d) A person having a cause of action under this section
24 shall be entitled to recover actual damages but not less than
25 liquidated damages of \$1,000, such punitive damages as may

1 be warranted, and such reasonable attorney's fee and other
2 litigation costs reasonably incurred as the court, in its discre-
3 tion, may award: *Provided, however,* That the United States,
4 a State, or any other governmental unit shall not be liable for
5 interest prior to judgment.

6 (e) The Attorney General may settle a claim for dam-
7 ages brought against the United States under this section,
8 and shall promulgate regulations to provide for the com-
9 mencement of an administrative inquiry following a determi-
10 nation of a violation of this Act by an officer or employee of
11 the United States and for the imposition of administrative
12 sanctions against such officer or employee if warranted.

13 (f) The district courts shall have original jurisdiction of
14 all civil actions arising under this section.

15 DEFINITIONS

16 SEC. 5. (a) "Documentary materials", as used in this
17 Act, means materials upon which information is recorded,
18 and includes, but is not limited to, written or printed materi-
19 als, photographs, tapes, videotapes, negatives, films, out-
20 takes, and interview files.

21 (b) "Work product", as used in this Act, means any
22 documentary materials created by or for a person in connec-
23 tion with his plans, or the plans of the person creating such
24 materials, to communicate to the public, except such work

1 product as constitutes contraband or the fruits or instrumen-
2 talities of a crime.

3 (c) "Any other governmental unit", as used in this Act,
4 includes the District of Columbia, the Commonwealth of
5 Puerto Rico, any territory or possession of the United States,
6 and any local government, unit of local government, or any
7 unit of State government.

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